

09 06 07
DOCKET NO. SHAM02-00001

PATENT #29

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Patent of: : Ronald J. MacNeil
Assignee of Patent : Shamrock Lacrosse, Inc.
Patent Number : RE 37,894 E
Date of Reissue : October 22, 2002
For : LACROSSE STICK HEAD
Reissue of : U. S. Patent No. 5,494,297
Issued February 27, 1996
Application No. 08/285,125
Filed August 2, 1994

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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OFFICE OF PETITIONS

Sir:

PETITION TO ACCEPT DELAYED PAYMENT OF MAINTENANCE FEE
IN ORDER TO REINSTATE EXPIRED PATENT (37 C.F.R. §1.378)

Pursuant to the provisions of 37 C.F.R. §1.378, Shamrock Lacrosse, Inc. (the "Petitioner") respectfully petitions the Commissioner to reinstate reissue patent RE 37,894 E ("Reissue Patent RE 37,894") and to accept payment of the enclosed maintenance fees, which were unavoidably delayed in being submitted to the United States Patent and Trademark Office (the "PTO").

Repln. Ref: 03/10/2009 CKHLOK 0000264300
DAH:500208 Name/Number:RE37894
FC: 9204 \$980.00 CR

Adjustment date: 03/10/2009 CKHLOK
09707/2007 HGBKTH1 00000005 RE37894
01 FC:1599 -3000.00 OP

03/10/2009 CKHLOK 00000015 RE37894

01 FC:1599

2020.00 OP

The Petitioner claims Small Entity Status for the payment of maintenance fees and for all other purposes. The Petitioner encloses the required maintenance fees and surcharges as follows:

1)	First maintenance fee:	\$ 450.00
2)	Second maintenance fee:	\$ 1,150.00
3)	Surcharge for accepting a first maintenance fee after expiration of a patent for non-timely payment of the first maintenance fee, where the delay in payment was unavoidable	\$ 700.00
4)	Surcharge for accepting a second maintenance fee after expiration of a patent for non-timely payment of the second maintenance fee, where the delay in payment was unavoidable.	\$700.00
TOTAL:		<u>\$3,000.00</u>

The Petitioner respectfully asserts that a separate petition fee is not required. See MPEP §2590. A check in the amount of \$3,000.00 is enclosed herewith.

The Petitioner encloses a copy of a first assignment filed at Reel No. 019767 / Frame No. 0198 assigning ownership of Reissue Patent RE 37,894 from Shamrock Lacrosse Inc. to Warrior Lacrosse, Inc. and a copy of a second assignment filed at Reel No. 109767 / Frame 0200 assigning ownership of Reissue Patent RE 37,894 from Warrior Lacrosse, Inc. to Shamrock Lacrosse Inc.

The Petitioner also encloses herewith a copy of a Power of Attorney from Shamrock Lacrosse, Inc. to the undersigned.

BACKGROUND

The following outlines the factual background regarding the unavoidably delayed payment of maintenance fees for Reissue Patent RE 37,894:

1) The inventor, Ronald J. MacNeil, filed United States Patent Application Serial No. 08/285,125 on August 2, 1994. Application Serial No. 08/285,125 eventually issued as U.S. Patent No. 5,494,297 ("Patent 5,494,297") on February 27, 1996.

2) On or about April 11, 1996, patentee MacNeil assigned Patent 5,494,297 to Shamrock Lacrosse, Inc. ("the Petitioner").

3) On or about August 13, 1997, the Petitioner retained the law firm Klehr, Harrison, Harvey, Branzburg and Ellers, LLP ("Klehr Harrison") to perform legal services related to intellectual property matters, including the filing of a reissue of Patent 5,494,297. The attorney at the Klehr Harrison law firm in charge of the Petitioner's patent work was Mr. Scott J. Fields. Mr. Fields is registered to practice before the PTO under Registration Number 32,857.

4) On February 25, 1998, the Klehr Harrison law firm and Mr. Fields filed Reissue Application Serial No. 09/030,702 for Patent 5,494,297. When Reissue Application Serial No. 09/030,702 was filed on February 25, 1998, Patent 5,494,297 was still in full force and effect.

5) The first maintenance fee for Patent 5,494,297 was due without surcharge by August 27, 1999. The 6-month grace period for paying the first maintenance fee with surcharge expired on February 27, 2000.

6) The first maintenance fee for Patent 5,494,297 was not paid and Patent 5,494,297 eventually expired on February 27, 2000.

7) Later in 2000, attorney Scott Fields left the Klehr Harrison law firm and joined the law firm Obermeyer, Rebmann, Maxwell and Hippel, LLP ("Obermeyer Rebmann").

8) On June 28, 2000, Mr. Fields sent the PTO a document entitled "Change of Address of Applicant's Attorney of Record" informing the PTO that Mr. Fields had changed firms, but was still the Attorney of Record on the Petitioner's reissue patent application.

9) On or about January 16, 2001, the Klehr Harrison law firm transferred the file for Reissue Application Serial No. 09/030,702 to the Obermeyer Rebmann law firm. At the Obermeyer Rebmann law firm, Mr. Fields continued to work on the prosecution of Reissue Application Serial No. 09/030,702.

10) On April 2, 2002, despite the non-payment of the first maintenance fee in Patent 5,494,297 and the February 27, 2000 expiration of Patent 5,494,297, the PTO mailed a Notice of Allowance for Reissue Patent RE 37,894.

11) The Petitioner paid the issue fee for Reissue Patent RE 37,894 on May 23, 2002 and Reissue Patent RE 37,894 issued on October 22, 2002.

12) In 2003, attorney Scott Fields left the Obermeyer Rebmann law firm and joined the law firm National IP Rights Center, LLP. Mr. Fields continued to be responsible for payment of all maintenance fees for Patent 5,494,297 and Reissue Patent RE 37,894.

13) The second maintenance fee for Patent 5,494,297 and Reissue Patent RE 37,894 was due without surcharge by August 27, 2003. The 6-month grace period for paying the second maintenance fee with surcharge expired on February 27, 2004.

14) The second maintenance fee for Patent 5,494,297/Reissue Patent RE 37,894 was not paid.

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REINSTATEMENT OF REISSUE PATENT RE 37,984

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The Petitioner respectfully asserts that the entire delay in payment of the maintenance fees was unavoidable, since the Petitioner took reasonable care to ensure that all maintenance fees would be timely paid and the Petitioner promptly filed this petition after the Petitioner became aware of the expiration of Reissue Patent RE 37,894 and the non-payment of the maintenance fees.

The Petitioner notes that decisions on reinstating or reviving a lapsed or expired patent are made on a case-by-case basis, taking all the facts and circumstances into account. *Smith v. Mossinghoff*, 671 F. 2d 533, 538, 213 U.S.P.Q. 977, 982 (D.C. Cir. 1982). The Petitioner respectfully submits that the facts and circumstances of the present case properly justify the acceptance of the delayed payment of maintenance fees and the reinstatement of Reissue Patent RE 37,894.

As the Commissioner is no doubt aware, the PTO has the authority to reinstate a patent that has lapsed due to the nonpayment of maintenance fees, even when the patent has been erroneously reissued by the PTO. For example, in *Utech v. Olson*, 84 F. Supp. 2d 1039, 54 U.S.P.Q.2d 1101 (D. Minn. 2000), an original patent that was in force when a reissue application was filed lapsed for nonpayment of the maintenance fees during the pendency of the reissue application. The lapsed

patent was subsequently reinstated by the PTO as the reissue patent for the unexpired remainder of the original patent's term.

The Court in *Utech v. Olsen* considered the language that is set forth in MPEP §1415.01 that states that if the original patent has expired, then no reissue patent can be granted. The Court found that the term "expire" does not refer to a lapse due to the non-payment of maintenance fees. The Court stated that:

Section 41(c)(1) expressly provides that "[i]f the Commissioner accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period." *See also* 37 C.F.R. Section 1.378. "Thus, a patent is retroactively rendered enforceable during the lapse time period when the Commissioner accepts late payment." *Fonar Corp. v. General Elec. Co.*, 197 F.3d 1543, 1554 [41 U.S.P.Q.2d 1801] (Fed. Cir. 1997). Although the *Fonar* case did not directly address the reissue of a patent based on a lapsed patent that was later reinstated, it supports the conclusion that the above-cited plain language of Section 41(c)(1) demands that a reissued patent not be rendered ineffective per se.

Utech v. Olsen, 54 U.S.P.Q.2d at 1104. In the present case, the PTO issued Reissue Patent RE 37,894 even though original Patent 5,494,297 had expired due to non-payment of the first maintenance fee.

The language of 35 U.S.C. §41(c)(1) regarding "unavoidable" delays in payment of maintenance fees is identical to the language in 35 U.S.C. §133 regarding "unavoidable" delays in responding to Office Actions. Thus, the PTO considers an unavoidable delay in payment of a late maintenance fee under the same standard used to judge an unavoidable delay in reviving an abandoned application. *See* MPEP §2590, p. 2500-16. *See also Ray v. Lehman*, 55 F.3d 606, 608-

09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988), *aff'd sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff'd*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)).

As the Commissioner is also aware, decisions on reviving abandoned applications (or reinstating lapsed patents) on the basis of unavoidable delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable. See MPEP §711.03(c), p. 700-202.

Concerning “unavoidable” delay, the court in *In re Mattullath* stated:

The word ‘unavoidable’ . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting *Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also *Winkler v. Ladd*, 221 F. Supp. 550, 552, 138 USPQ 666, 667-68 (D.D.C. 1963), *aff'd*, 143 USPQ 172 (D.C. Cir. 1963); *Ex parte Henrich*, 1913 Dec. Comm'r Pat. 139, 141 (1913). See also MPEP §711.03(c), p. 700-202. Moreover, as noted above, decisions on revival are made on a “case-by-case basis, taking all the facts and circumstances into account.” *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). See also MPEP §711.03(c), p. 700-202.

The Petitioner respectfully asserts that, at all times during its ownership of Patent 5,494,297 and Reissue Patent RE 37,894, the Petitioner has exercised that level of care or diligence that is generally used and observed by prudent and careful businesspeople in relation to their most important business. The Petitioner has reasonably relied on the ordinary and trustworthy agencies of the postal service and telephone service providers, worthy and reliable employees, well-known and reputable law firms experienced in handling patent matters, and such other means and instrumentalities that are usually employed in important business. The Petitioner respectfully asserts that the non-payment of the maintenance fees occurred unexpectedly and through the unforeseen faults of attorney Scott Fields and the law firms of which he was a member and that the delay in payment of the maintenance fees may properly be said to be unavoidable.

The Commissioner's attention is now directed to the Statement of Peter Rogers in Support Of Petition Under 37 CFR 1.378 ("Statement of Peter Rogers") that accompanies this Petition. As the Statement of Peter Rogers indicates, the Petitioner entrusted attorney Scott Fields and the law firms of which he was a member, namely, the Klehr Harrison law firm, the Obermeyer Rebmann law firm, and the National IP Rights Center law firm, with taking the proper steps to protect the Petitioner's rights in Patent 5,494,297 and in Reissue Patent RE 37,894. The Statement of Peter Rogers further indicates that at no time did the Petitioner have reason to suspect that either Mr. Scott Fields or any these law firms had failed to make a filing deadline or to timely pay a maintenance fee related to Patent 5,494,297/Reissue Patent RE 37,894.

In selecting experienced legal professionals to handle its patent matters, the Petitioner exercised that level of care and diligence that is generally used and observed by prudent and careful businesspeople in relation to their most important business. Attorney Scott Fields and the Klehr Harrison, Obermeyer Rebmann, and National IP Rights Center law firms had achieved excellent reputations in the handling of patent matters. All had professed and exhibited exemplary competence in the preparation and prosecution of patent applications, including Reissue Patent RE 37,894. All had professed their expertise in handling docketing matters related to issued patents, including their expertise in using expert docketing software to ensure payment of maintenance fees post-issuance.

It was entirely reasonable for the Petitioner to rely on the reputations and professed expertise of Mr. Scott Fields and the Klehr Harrison, Obermeyer Rebmann, and National IP Rights Center law firms with respect to the payment of maintenance fees related to Reissue Patent RE 37,894. This reliance was only further reinforced when the PTO issued Reissue Patent RE 37,894 without objection, notwithstanding the non-payment of the first maintenance fee.

Moreover, it is the opinion of the Petitioner, based on information and belief, that subsequent to the lapsing of Reissue Patent RE 37,894, Mr. Fields and/or one of more of his law firms may have concealed from the Petitioner the facts concerning the nonpayment of the first and second maintenance fees in order to avoid a claim of legal malpractice. Due to the deceptive actions of Mr.

Fields and the laws firms of which he was a member, the Petitioner was prevented from finding out about the nonpayment of the maintenance fees at an earlier time.

The Petitioner respectfully asserts that the facts and circumstances in this case properly demonstrate that the delay in payment of the first and second maintenance fees was unavoidable, since the Petitioner took reasonable care to ensure that all maintenance fees would be timely paid and the Petitioner promptly filed this petition after the Petitioner became aware of the expiration of Reissue Patent RE 37,894 and the non-payment of the maintenance fees. Therefore, the Petitioner respectfully requests the Commissioner to accept the unavoidably delayed payment of the maintenance fees in this case and to reinstate lapsed Reissue Patent RE 37,894 for the unexpired remainder of the original patent's term.

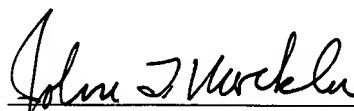
The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK BUTRUS, P.C.

Date: 5 September 2007

P.O. Drawer 800889
Dallas, Texas 75380
(972) 628-3600 (main number)
(972) 628-3616 (fax)
E-mail: jmockler@munckbutrus.com



John T. Mockler
Registration No. 39,775

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TRADEMARK OFFICE

**REVOCATION OF POWER OF
ATTORNEY WITH
NEW POWER OF ATTORNEY
AND
CHANGE OF CORRESPONDENCE ADDRESS**

Reissue Pat No.	RE 37,894
Issue Date	August 2, 1994
First Named Inventor	Ronald J. MacNeil
Art Unit	
Examiner Name	
Attorney Docket Number	SHAM02-00001

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I hereby revoke all previous powers of attorney given in the above-identified application.

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☐ A Power of Attorney is submitted herewith.

OR

☒ I hereby appoint the practitioners associated with the Customer Number:

23990

☐ Please change the correspondence address for the above-identified application to:

☒ The address associated with Customer Number:

23990

OR

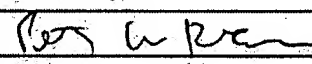
<input type="checkbox"/> Firm or Individual Name					
Address					
Address					
City		State		Zip	
Country					
Telephone			Fax		

I am the:

☐ Applicant/Inventor.

☒ Assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

SIGNATURE of Applicant or Assignee of Record

Name	Peter W. Rogers		
Signature			
Date	8-30-07	Telephone	903-887 4880

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 3 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



DOCKET NO. SHAM02-00001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: : Ronald J. MacNeil
Assignee of Patent : Shamrock Lacrosse, Inc.
Patent Number : RE 37,894 E
Date of Reissue : October 22, 2002
For : LACROSSE STICK HEAD
Reissue of : U. S. Patent No. 5,494,297
Issued February 27, 1996
Application No. 08/285,125
Filed August 2, 1994

MAIL STOP PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

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STATEMENT OF PETER ROGERS IN SUPPORT OF PETITION
UNDER 37 CFR §1.378

I, Peter Rogers, Affiant herein, hereby state and declare as follows:

1) I am an officer and principal of Shamrock Lacrosse, Inc., the Petitioner in this matter. I am competent to make this statement.

2) On information and belief, the patentee, Mr. Ronald J. MacNeil, filed United States Patent Application Serial No. 08/285,125 on August 2, 1994. Application Serial No. 08/285,125 eventually issued as U.S. Patent No. 5,494,297 ("Patent 5,494,297") on February 27, 1996.

3) At least as early as December 1995, I met with Mr. MacNeil to discuss the formation of a lacrosse equipment manufacturing business (i.e., Shamrock Lacrosse, Inc.) and the acquisition of Mr. MacNeil's rights in Application Serial No. 08/285,125 and, eventually, Patent 5,494,297.

4) On or about April 11, 1996, Mr. MacNeil assigned Patent 5,494,297 to the Petitioner, Shamrock Lacrosse, Inc.

5) Beginning with the assignment of Patent 5,494,297 to the Petitioner and continuing up to the present day, I have been involved in the supervision and protection of the Petitioner's intellectual property rights, including the maintenance of Patent 5,494,297 and in the filing, prosecution and maintenance of Reissue Patent RE 37,894.

6) In order to maintain Patent 5,494,297 and to protect the Petitioner's rights in Patent 5,494,297, on or about August 13, 1997, the Petitioner retained the law firm Klehr, Harrison, Harvey, Branzburg and Ellers, LLP ("Klehr Harrison") to perform legal services related to intellectual property matters.

7) Specifically, the Petitioner retained the Klehr Harrison law firm to pay maintenance fees for Patent 5,494,297 and to file, prosecute, and eventually to pay maintenance fees on a reissue patent based on Patent 5,494,297 (i.e., Reissue Patent RE 37,894). The attorney at the Klehr Harrison law firm in charge of the Petitioner's patent work was Mr. Scott J. Fields. On information and belief, Mr. Scott Fields is registered to practice before the United States Patent and Trademark Office ("PTO") under Registration Number 32,857.

8) The Petitioner selected the Klehr Harrison law firm and Mr. Scott Fields based on the reputation of the Klehr Harrison law firm and Mr. Scott Fields and also based on representations made by the Klehr Harrison law firm and Mr. Scott Fields regarding the extensive experience and competence of Mr. Scott Fields and the other attorneys and paralegals employed by the Klehr Harrison law firm. These representations included statements regarding the expert docketing software used by the Klehr Harrison firm to maintain a patent docket and the competence and training of the attorneys and paralegals who used the expert docketing software.

9) On February 25, 1998, the Klehr Harrison law firm and Mr. Scott Fields filed in the PTO Reissue Application Serial No. 09/030,702 for Patent 5,494,297. Based on information and belief, Patent 5,494,297 was still in full force and effect when Reissue Application Serial No. 09/030,702 was filed on February 25, 1998.

10) Throughout the entire time period that the Petitioner engaged the Klehr Harrison law firm, the Petitioner frequently and timely paid the invoices of the Klehr Harrison law firm for attorney and paralegal professional services and for fees and expenses related to Patent 5,494,297 and Reissue Application Serial No. 09/030,702. The fees paid by the Klehr Harrison law firm to the PTO were reimbursed by the Petitioner and, in accordance with the agreement between the Petitioner and the Klehr Harrison law firm, were understood to include such routine PTO fees as issue fees, maintenance fees, extension of time fees, and the like.

11) In 2000, attorney Scott Fields left the Klehr Harrison law firm and joined the law firm Obermeyer, Rebmann, Maxwell and Hippel, LLP ("Obermeyer Rebmann").

12) In order to continue to protect the Petitioner's rights in Patent 5,494,297 and Reissue Application Serial No. 09/030,702, the Petitioner decided to transfer its files related to Patent 5,494,297 and Reissue Application Serial No. 09/030,702 to the Obermeyer Rebmann law firm so that Mr. Scott Fields could continue to maintain Patent 5,494,297 and to prosecute Reissue Application Serial No. 09/030,702.

13) The Petitioner's decision to transfer its files from the Klehr Harrison law firm to the Obermeyer Rebmann law firm and to Mr. Scott Fields was based on the reputation of the Obermeyer Rebmann law firm and on the prior excellent performance of Mr. Scott Fields in handling matters related to Patent 5,494,297 and Reissue Application Serial No. 09/030,702. The Petitioner's decision was also based on representations made by the Obermeyer Rebmann law firm and Mr. Scott Fields regarding the expertise and competence of the attorneys and paralegals of the Obermeyer Rebmann law firm in maintaining an electronic patent docket using expert docketing software.

14) Based on information and belief, on or about June 28, 2000, Mr. Scott Fields sent the PTO a document entitled "Change of Address of Applicant's Attorney of Record" informing the PTO that Mr. Scott Fields had moved to the Obermeyer Rebmann law firm, but was still the Attorney of Record on the Petitioner's Reissue Application Serial No. 09/030,702.

15) Based on information and belief, on or about January 16, 2001, the Klehr Harrison law firm transferred the file for Reissue Application Serial No. 09/030,702 to the Obermeyer Rebmann law firm. At the Obermeyer Rebmann law firm, Mr. Scott Fields continued to work on the prosecution of Reissue Application Serial No. 09/030,702.

16) On April 2, 2002, the PTO mailed a Notice of Allowance for Reissue Patent RE 37,894.

17) The Petitioner paid the issue fee for Reissue Patent RE 37,894 on May 23, 2002 and Reissue Patent RE 37,894 issued on October 22, 2002.

18) Throughout the entire time period that the Petitioner engaged the Obermeyer Rebmann law firm, the Petitioner frequently and timely paid the invoices of the Obermeyer Rebmann law firm for attorney and paralegal professional services and for fees and expenses related to Patent 5,494,297 and Reissue Application Serial No. 09/030,702. The fees paid by the Obermeyer Rebmann law firm to the PTO were reimbursed by the Petitioner and, in accordance with the agreement between the Petitioner and the Obermeyer Rebmann law firm, were understood to include such routine PTO fees as issue fees, maintenance fees, extension of time fees, and the like.

19) In 2003, attorney Scott Fields left the Obermeyer Rebmann law firm and joined the law firm National IP Rights Center, LLP.

20) As before, the Petitioner decided to transfer its files related to Patent 5,494,297 and Reissue Patent RE 37,894 to the National IP Rights Center law firm so that Mr. Scott Fields could continue to maintain Reissue Patent RE 37,894. After the transfer, Mr. Scott Fields and the National IP Rights Center law firm continued to be responsible for payment of all maintenance fees for Patent 5,494,297/Reissue Patent RE 37,894.

21) At no time during the preparation, filing, prosecution, and post-issuance period of Reissue Patent RE 37,894 did the Petitioner ever receive any indication that either Mr. Scott Fields or any of the law firms in which he was employed had acted in an incompetent manner or failed to meet a filing deadline of any sort in the PTO.

22) To the contrary, the Petitioner was led to believe that Mr. Fields, the Klehr Harrison law firm, the Obermeyer Rebmann law firm, and the National IP Rights Center law firm had all exhibited exemplary competence in ensuring that all filing deadlines related to Patent 5,494,297/Reissue Patent RE 37,894 were met and that all fees related to Patent 5,494,297/Reissue Patent RE 37,894 were timely paid.

23) The Petitioner's belief in the exemplary competence of its legal representatives was further reinforced when the United States Patent and Trademark Office issued Reissue Patent RE 37,894 on October 22, 2002 without any objection, even though the first maintenance fee - due no later than February 27, 2000 - was already overdue.

24) During 2006, subsequent to the issuance of Reissue Patent RE 37,894 on October 22, 2002, the Petitioner was involved in license negotiations with a third party regarding lacrosse equipment covered by Reissue Patent RE 37,894. During these negotiations, the third party informed the Petitioner that Reissue Patent RE 37,894 had lapsed due to non-payment of maintenance fees. This was the first time that Petitioner had learned that Reissue Patent RE 37,894 had lapsed.

25) Subsequently, the Petitioner has learned that neither the first maintenance fee for Patent 5,494,297/Reissue Patent RE 37,894 - due no later than February 27, 2000 - nor the second maintenance fee for Patent 5,494,297/Reissue Patent RE 37,894 - due no later than February 27, 2004 had been paid by Mr. Fields, the Klehr Harrison law, the Obermeyer Rebmann law firm, or the National IP Rights Center law firm.

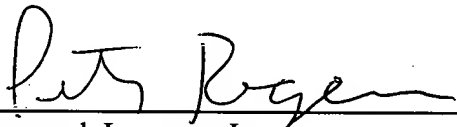
26) Promptly upon learning that Reissue Patent RE 37,894 had lapsed due to non-payment of the first and second maintenance fees, the Petitioner retained new counsel to pay the first and second maintenance fees and to reinstate Reissue Patent RE 37,894.

27) It is my opinion, based on information and belief, that subsequent to the lapsing of Reissue Patent RE 37,894, Mr. Fields and/or one or more of the law firm(s) in which he was employed may have purposely concealed from the Petitioner the facts concerning the nonpayment of the Reissue Patent RE 37,894 maintenance fees in order to avoid a claim of legal malpractice. It is my opinion, based on information and belief, that this concealment may have included concealing a notification from the Patent Office that Reissue Patent RE 37,894 had expired due to non-payment of maintenance fees. I believe these actions prevented the Petitioner from finding out about the nonpayment of the maintenance fees at an earlier time.

28) Presently, the Petitioner is investigating a potential malpractice claim against one or more of Mr. Fields, the Klehr Harrison law firm, the Obermeyer Rebmann law firm, and the National IP Rights Center law firm. Due to the adverse position of the Petitioner against Mr. Fields, the Klehr Harrison law firm, the Obermeyer Rebmann law firm, and the National IP Rights Center law firm, these adverse parties are unwilling to cooperate in the reinstatement of Reissue Patent RE 37,894.

29) I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are also believed to be true. I am aware that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001) and may jeopardize the validity of the application or any patent issuing thereon.

Date: 8-13-07



Shamrock Lacrosse, Inc.
Peter Rogers
President

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

STATEMENT UNDER 37 CFR 3.73(b)**RECEIVED**Applicant/Patent Owner: Shamrock Lacrosse, Inc.Application No./Patent No./Control No.: RE 37,894 Filed/Issue Date: October 22, 2002**SEP 14 2007**

Entitled:

LACROSSE STICK HEAD**OFFICE OF PETITIONS**Shamrock Lacrosse, Inc.a New Jersey corporation

(Name of Assignee)

(Type of Assignee: corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of less than the entire right, title and interest
(The extent (by percentage) of its ownership interest is _____ %)

in the patent application/patent identified above by virtue of either:

A. ☐ An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel _____, Frame _____, or a true copy of the original assignment is attached.

OR

B. ☒ A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as follows:

1. From: Ronald J. MacNeil To: Sandra L. MacNeil
The document was recorded in the United States Patent and Trademark Office at Reel 7908, Frame 0907, or for which a copy thereof is attached.
2. From: Sandra L. MacNeil To: Shamrock Lacrosse, Inc.
The document was recorded in the United States Patent and Trademark Office at Reel 7961, Frame 0966, or for which a copy thereof is attached.
3. From: Shamrock Lacrosse Inc. To: Warrior Lacrosse, Inc.
The document was recorded in the United States Patent and Trademark Office at Reel 019767, Frame 0198, or for which a copy thereof is attached.

☒ Additional documents in the chain of title are listed on a supplemental sheet.

As required by 37 CFR 3.73(b)(1)(i), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.

[NOTE: A separate copy (i.e., a true copy of the original assignment document(s)) must be submitted to Assignment Division in accordance with 37 CFR Part 3, to record the assignment in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

Peter W. Rogers

Signature

Printed or Typed Name

President

Title

Date

8-3007
973-884-4880

Telephone Number

This collection of information is required by 37 CFR 3.73(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



STATEMENT UNDER 37 CFR 3.73(b) (SUPPLEMENTAL SHEET)

4. From: Warrior Sports, Inc. a.k.a. Warrior Lacrosse, Inc.
To: Shamrock Lacrosse Inc.

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Reel 019767, Frame 0200, or for which a copy thereof is attached.

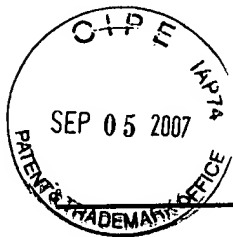
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**UNITED STATES PATENT AND TRADEMARK OFFICE**UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

AUGUST 31, 2007

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P.O. DRAWER 800889
DOCKET CLERK
DALLAS, TX 75380UNITED STATES PATENT AND TRADEMARK OFFICE
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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 08/30/2007

REEL/FRAME: 019767/0198
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

SHAMROCK LACROSSE, INC.

DOC DATE: 04/04/2006

ASSIGNEE:

WARRIOR LACROSSE, INC.
6881 CHICAGO ROAD
WARREN, MICHIGAN 48092SERIAL NUMBER: 09030702
PATENT NUMBER: RE37894
TITLE: LACROSSE STICK HEADFILING DATE: 02/25/1998
ISSUE DATE: 10/22/2002

ASSIGNMENT SERVICES BRANCH

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08/30/2007
500345438

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OFFICE OF PETITIONS

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Shamrock Lacrosse, Inc.	04/04/2006
RECEIVING PARTY DATA	
Name:	Warrior Lacrosse, Inc.
Street Address:	6881 Chicago Road
City:	Warren
State/Country:	MICHIGAN
Postal Code:	48092
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	RE37894
CORRESPONDENCE DATA	
Fax Number:	(972)628-3616
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	972-628-3600
Email:	kwoods@munckbutrus.com
Correspondent Name:	Munck Butrus, P.C.
Address Line 1:	P.O. Drawer 800889
Address Line 2:	Docket Clerk
Address Line 4:	Dallas, TEXAS 75380
NAME OF SUBMITTER:	John T. Mockler
Total Attachments: 1 source=Assignment - Shamrock to Warrior#page1.tif	

CH \$40.00 RE37894

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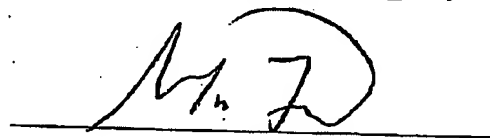
EXHIBIT A - ASSIGNMENT

WHEREAS, Shamrock Lacrosse, Inc. (hereinafter "ASSIGNOR"), a New Jersey corporation having its principal place of business at 17 Farinella Drive, East Hanover, New Jersey 07936, is the owner by assignment of United States Patent No RE37,894 (the "894 PATENT"), entitled "Lacrosse Stick Head," which reissued on October 22, 2002;

And WHEREAS, Warrior Lacrosse, Inc. (hereinafter "ASSIGNEE"), a Michigan corporation having its principal place of business at 6881 Chicago Rd., Warren, Michigan 48092, desires to acquire the entire right, title and interest in and to the '894 PATENT, including the right to sue for past damages;

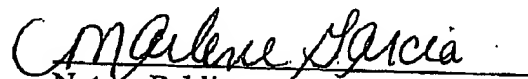
NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid to ASSIGNOR, and other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR hereby acknowledges that it has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title, and interest, including the right to sue for past damages, throughout the United States of America, in, to and under the '894 PATENT and all reissues thereof, and ASSIGNOR hereby authorizes and requests the Commissioner of Patents of the United States to issue all reissues of the '894 PATENT to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 4th day of April, 2006.

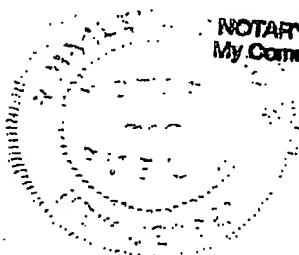


State of New Jersey
County of Morris

Before me personally appeared Mark Ford and acknowledged the foregoing instrument to be his free act and deed this 4th day of April, 2006.


Notary Public
Morris County
State of New Jersey
My Commission
expires: June 6, 2009

MARLENE GARCIA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 6, 2009



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DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

AUGUST 31, 2007

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DALLAS, TX 75380UNITED STATES PATENT AND TRADEMARK OFFICE
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PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT SERVICES BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 08/30/2007

REEL/FRAME: 019767/0200
NUMBER OF PAGES: 2

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

WARRIOR SPORTS, INC., FORMERLY
KNOWN AS WARRIOR LACROSSE, INC.

DOC DATE: 08/08/2007

ASSIGNEE:

SHAMROCK LACROSSE, INC.
17 FARINELLA DRIVE
EAST HANOVER, NEW JERSEY 07936SERIAL NUMBER: 09030702
PATENT NUMBER: RE37894
TITLE: LACROSSE STICK HEADFILING DATE: 02/25/1998
ISSUE DATE: 10/22/2002

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PATENT ASSIGNMENT

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08/30/2007
500345446

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Warrior Sports, Inc., formerly known as Warrior Lacrosse, Inc.	08/08/2007
RECEIVING PARTY DATA	
Name:	Shamrock Lacrosse, Inc.
Street Address:	17 Farinella Drive
City:	East Hanover
State/Country:	NEW JERSEY
Postal Code:	07936
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	RE37894
CORRESPONDENCE DATA	
Fax Number:	(972)628-3616
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	972-628-3600
Email:	kwoods@munckbutrus.com
Correspondent Name:	Munck Butrus, P.C.
Address Line 1:	P.O. Drawer 800889
Address Line 2:	Docket Clerk
Address Line 4:	Dallas, TEXAS 75380
NAME OF SUBMITTER:	John T. Mockler
Total Attachments: 1 source=Assignment - Warrior to Shamrock#page1.tif	

CH \$40.00 RE37894

ATTACHMENT A – ASSIGNMENT

WHEREAS, Warrior Sports, Inc., formerly known as Warrior Lacrosse, Inc. (hereinafter, "ASSIGNEE"), a Michigan corporation having its principal place of business at 6881 Chicago Rd., Warren, Michigan 48092, is the owner by assignment of United States Reissue Patent No. RE 37,894 (the "'894 PATENT"), entitled "Lacrosse Stick Head," which reissued on October 22, 2002; and

WHEREAS, Shamrock Lacrosse, Inc. (hereinafter, "ASSIGNOR"), a New Jersey corporation having its principal place of business at 17 Farinella Drive, East Hanover, New Jersey 07936, desires to acquire the entire right, title and interest in and to the '894 PATENT, including the right to sue for past damages;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid to ASSIGNOR, and other good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR hereby acknowledges that it has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, the entire right, title, and interest, including the right to sue for past damages, throughout the United States of America, in, to and under the '894 PATENT and all reissues thereof, and ASSIGNOR hereby authorizes and requests the Commissioner of Patents of the United States to issue all reissues of the '894 PATENT to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 8 day of August, 2007.

By: [Signature]

State of Michigan)
County of Oakland)ss

Before me personally appeared David Morrow and acknowledged the foregoing instrument to be his free act and deed this 8th day of August, 2007.

Angelina M. Lozano-Mosconitz
Notary Public
Oakland County
State of Michigan
My Commission
Expires: 9-22-2012

ANGELINA M. LOZANO-MOSCONITZ
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES SEP 22, 2012
ACTING IN COUNTY OF Macomb